



**Friends of  
the Earth**

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December 31, 2009

The Honorable Charles Terreni  
Chief Clerk/Administrator  
Public Service Commission of South Carolina  
101 Executive Center Dr., Suite 100  
Columbia, SC 29210

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**Docket 2007-440-E: Pre-Construction Cost Period Ended for Duke Energy's Lee Reactors,  
New Cooling Lake Costs Not Covered**

Dear Mr. Terreni:

I am writing to you concerning Docket 2007-440-E (*Application of Duke Energy Carolinas, LLC for Approval of Decision to Incur Nuclear Generation Pre-Construction Costs for the Lee Nuclear Station in Cherokee County*), to which Friends of the Earth has been a party.

The South Carolina Public Service Commissions' Order Number 2008-417 of June 9, 2008 allowed certain pre-construction costs to be incurred by Duke Energy in pursuit of new nuclear reactors associated with the Lee site in Cherokee County, South Carolina. Friends of the Earth appealed this PSC decision as we feel that justification by Duke for the project was lacking and that it was not prudent to proceed with any aspect of this costly and risky project.

**1. Costs incurred are allowed only through December 31, 2009**

In Order 2008-417, the PSC decided that allowed preconstruction costs associated with each aspect of the Lee reactor project may be incurred only through December 31, 2009. Point number 3 of section IV. *Order* (page 37) of the order states: "Duke Energy Carolinas' is authorized to incur the South Carolina allocable share of the \$230 million in Lee Nuclear Station project development costs as described in its application, testimony and exhibits, through December 31, 2009."

We thus note that no costs incurred after December 31, 2009 are covered by Order 2008-417. This would include cost associated with any contract agreed to prior to December 31, 2009 but under which costs were incurred after December 31.

We further note that the PSC in item number 4, section IV. *Order* (page 37) stated: "For ratemaking purposes, the issuance of this Order does not constitute approval of the reasonableness or prudence of specific project development activities or recoverability of specific items of cost, and the approval and grant contained herein is without prejudice to the right of any party to take issue with the treatment of specific project development costs." All

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parties to the project can thus challenge the prudence of any costs incurred under the PSC order."

**2. No costs incurred for the development of the proposed new cooling lake ("Make-Up Pond C") are allowed under Order 2008-417**

Duke chose not to make an initial or late filing with the PSC which discusses "Make-up Pond C," an off-site lake which Duke needs for reactor cooling. Due to the severe water demands that the reactors would place on the Broad River it has been clear that water is but one of the limiting factors in decisions related to the project.

According to information submitted to the Nuclear Regulatory Commission, the impoundment of London Creek, north of the site chosen for the reactor location, would be 620 acres in size (approximately one-square mile), would include a buffer around the reservoir of 458 acres, would hold 22,000 acre-feet of water and would have a dam about 130 feet in height. Thus, this is no small impoundment. The average flow of London Creek is only 7 cubic feet per second and the minimum flow is near zero, according to documents filed with the NRC.

Duke determined that it needs an additional 11,000 cubic feet of water on demand and that modification of Pond B, which is on site, and other options were not sufficient to provide the need amount of cooling water. It thus appears that due to the shortage of on-site water and in the river itself, Duke is now considering a new cooling lake north of the site earlier designated to the PSC as where the project would be located.

The initial application by Duke to the PSC to incur pre-construction costs and subsequent filings in docket 2007-440-E do not mention any off-site lake being considered for reactor cooling. Likewise, maps of the site submitted for the record do not indicate plans for a new off-site lake for cooling water. Thus, there is nothing in the hearing record to reflect that Duke was developing plans for a new off-site cooling lake or that Duke was seeking to incur pre-construction costs associated with any aspect of the proposed lake.

Likewise, in Duke's Integrated Resource Plan dated September 1, 2009 and officially submitted to the PSC, no mention is made of an off-site cooling water lake associated with the Lee reactor project.

In the PSC Order 2008-417, the PSC noted on pages 20-21 that Duke Energy witness Dhiaa M. Jamil pointed out "the following categories of project development work that are anticipated during Calendar years 2008 and 2009 to continue the development of the Lee Nuclear Station:

***Nuclear Regulatory Commission (NRC) Review and hearings, which include all estimated costs associated with NRC Review Fees; costs required to answer NRC data requests regarding the COLA, and associated legal fees.***

***Land and Right of Way Purchases, which include the cost of acquiring land for***

*the site as well as land for transmission and railroad rights of way.*

***Site Preparation***, which includes costs associated with completing remaining demolition of structures previously constructed as part of the prior Cherokee Nuclear Facility. This category also includes costs associated with ongoing industrial security; utilities; miscellaneous minor site maintenance; and funds required by the Department of Homeland Security for nuclear power plant licensees and applicants. Also included are costs associated with designing rail, water, and sewer upgrades for the facility prior to the point of awarding bids to contractors.

***Project Planning and Engineering***, which includes costs associated with developing an engineering, procurement, and construction contract with Westinghouse Electric Corporation - Shaw Stone and Webster ("Westinghouse/Shaw"), the consortium delivering the AP 1000 nuclear units. This category of costs also covers site-specific engineering; construction planning; and some limited initial payments on long-lead material and equipment items such as: Reactor Coolant Pumps, Containment Vessel, Reactor Pressure Vessel, Steam Generators, Control Rod Drive Mechanisms, and Condenser Circulating Water Piping. (Tr. Vol. 4, p. 383-384).

No "category" presented by Mr. Jamil includes development of a lake or any other facility off the site of the proposed reactors. Likewise, neither Mr. Jamil or any other Duke witness or document mentioned an off-site cooling lake or requested that any costs associated with it be allowed. Duke has been clear that costs requested to be incurred will be for only the site as presented to the PSC, which is where the abandoned Cherokee reactor project had been pursued in the 1980s.

No subsequent or late filings with the PSC in docket 2007-440-E have informed the PSC of any plans for a new cooling lake and there has been no request for costs associated with any aspect of that lake, including land purchase and engineering and licensing costs, to be covered in pre-construction costs. Likewise, Friends of the Earth, in its role as a formal intervenor in docket 2007-440-E, has not been informed by Duke of its consideration of a new cooling lake nor of any costs associated with it.

We note that Duke filed a document with the NRC dated September 24, 2009 entitled *Supplement to Revision 1 of the William States Lee III Nuclear Station COL Application, Part 3 Applicant's Environmental Report, Construction and operation of Make-Up Pond C*. (ML092810257 in ADAMS, the NRC's digital library). No information about the lake was similarly filed with the PSC and thus there remains nothing in the record of docket 2007-440-E concerning the new lake under consideration. Further, we are aware that the NRC is in the process of determining a time to conduct a second "scoping" meeting in Gaffney, SC on the Environmental Impact Statement for the Duke nuclear reactor project and that this could be held in March, with a focus on the impacts of the new lake. No Duke costs incurred prior to

December 31, 2009 and which are associated with that meeting or the EIS as it pertains to the new lake are covered under Order 2008-417.

In conclusion, the record reflects that no costs incurred by Duke associated with any aspect of a new cooling lake ("Make-Up Pond C"), about which the PSC has not been informed, were authorized by the PSC in Order 2008-417. The prudence of proceeding with the overall project and the planning of the new cooling lake likewise remain in question.

It is essential that the PSC request and be presented with a full accounting of costs by Duke that have been incurred under Order 2008-417 through December 31, 2009 and that all parties thus have the opportunity to review such costs and determine if they comply with costs in the categories allowed by Order 2008-417.

All parties to docket 2007-440-E are being sent copies of this letter.

The same general situation as described above applies to the Duke Energy Carolinas, LLC "Application for Authority to Recover Necessary Nuclear Generation Development Expenses and Request for Expedited Treatment" (E-7 Sub 819) before the North Carolina Utilities Commission, which also allowed expense to be incurred only through December 31, 2009. Though Friends of the Earth is not a formal party to those proceedings in North Carolina, this letter is also being filed with the NC Utilities Commission

Sincerely,

A handwritten signature in cursive script that reads "Tom Clements". The signature is written in dark ink and is positioned above the printed name.

Tom Clements  
Southeastern Nuclear Campaign Coordinator  
Friends of the Earth